

NO. \_\_\_\_\_

STATE OF TEXAS,  
Plaintiff,

v.

THOMAS S. CARMICHAEL  
D/B/A DISCOUNT CONSTRUCTION

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§  
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§  
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§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st

\_\_\_\_ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiff the STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, complains of Thomas S. Carmichael ("Defendant"), and for cause of action would respectfully show:

Filed in the District Court  
of Travis County, Texas

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**I.**

**DISCOVERY CONTROL PLAN**

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. CIV. P. 190.3.

**II.**

**SUMMARY OF CASE**

2.1 The Texas Telemarketing Disclosure and Privacy Act, TEX. BUS. & COM. CODE § 44.001 *et seq.* (Vernon Supp. 2008) ("TTDPA") prohibits, among other things, making a telemarketing call to a telephone number that has been published on the Texas no-call list for more than 60 days. Defendant has violated the TTDPA by making repeated telemarketing calls to Texas residents who have paid to have their telephone number included on the Texas no-call list.

2.2 The TTDPA specifically grants the Texas Attorney General authority to enforce the

TTDPA through lawsuits seeking injunctive relief, attorneys' fees and civil penalties. The TTDPA also grants the Consumer Protection Division of the Attorney General's Office the authority to enforce the statute pursuant to section 17.47 of the Texas Deceptive Trade Practices–Consumer Protection Act, TEX. BUS. & COM. CODE ANN., § 17.41 *et seq.* (Vernon 2002 and Supp. 2008) (“DTPA”).

### **III.**

#### **JURISDICTION AND VENUE**

3.1 This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted to him by section 44.102(c) of the TTDPA and the authority granted to him by section 17.47 of the DTPA.

3.2 Venue of this suit lies in Travis County, Texas pursuant to section 44.102(e) of the TTDPA.

### **IV.**

#### **DEFENDANT**

4.1 Defendant Thomas S. Carmichael is an individual doing business in the State of Texas as Discount Construction. Defendant may be served at his residence 14310 Muirfield Lane, Houston, Texas 77095, or whenever he may be found.

### **V.**

#### **PUBLIC INTEREST**

5.1 Because Plaintiff State of Texas has reason to believe that Defendant has engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff has reason to believe

Defendant has caused and will cause injury, loss and damage to the STATE OF TEXAS, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State.

## **VI.**

### **TRADE AND COMMERCE**

6.1 Defendant has, at all times described below, engaged in conduct which constitutes "trade" and "commerce" as those terms are defined by § 17.45(6) of the DTPA.

## **VII.**

### **ACTS OF AGENTS**

- 7.1 Whenever in this petition it is alleged that a Defendant did any act, it is meant that:
- a. The Defendant performed or participated in the act; or
  - b. The Defendant's officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

## **VIII.**

### **STATEMENT OF FACTS**

8.1 Defendant is in the business of providing residential construction work and solicits customers for his business through various methods, including unsolicited telephone solicitations. Defendant's telemarketing calls, therefore, are intended to solicit the sale of goods or services that are normally used for personal, family, or household purposes.

8.2 In the course of soliciting customers, Defendant has made, or caused to be made, multiple and repeated unsolicited telemarketing calls to persons whose telephone number appeared on the then-current Texas no-call list for more than 60 days. Such telemarketing calls were made

despite the fact the Defendant does not have a current or prior established business relationship with the called person.

8.3 Defendant's telemarketing calls in violation of the DTPA were not isolated occurrences.

## **IX.**

### **CAUSE OF ACTION**

9.1 Plaintiff hereby incorporates the preceding paragraphs 1.1 through 8.3.

9.2 Plaintiff alleges that Defendant has violated section 44.102 (a) of the TTDPA by making telemarketing calls to Texas residents whose telephone numbers were included on the then-current Texas no-call list for longer than 60 days.

## **X.**

### **PRAYER**

10.1 Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated and will continue to violate the law as alleged in this Petition. Unless enjoined by this Honorable Court, Defendant will continue to violate the laws of the STATE OF TEXAS and cause injury, loss and damage to the STATE OF TEXAS and to the general public.

10.2 WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; and upon notice and hearing TEMPORARY AND PERMANENT INJUNCTIONS be issued, restraining and enjoining Defendant, Defendant's agents, servants, employees, and attorneys, and any other person in active concert or participation with Defendant, from further unlawful conduct as set out above.

10.3 In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court adjudge

against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS in the amount of:

- a. One Thousand and No/100 Dollars (\$1,000.00) for each violation of the TTDPA; and
- b. Three Thousand and No/100 Dollars (\$3,000.00) for each violation that was committed knowingly or willfully.

10.4 Plaintiff STATE OF TEXAS further prays that this Court order Defendant to pay all costs of Court, costs of investigation, and reasonable attorney's fees pursuant to section 44.102(c) of the TTDPA and TEX. GOV'T CODE § 402.006(c) (Vernon 2005 and Supp. 2008).

10.5 Plaintiff prays that this Court grant all other relief to which the Plaintiff STATE OF TEXAS may show itself entitled.

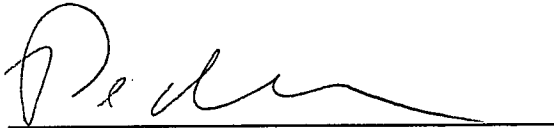
Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

C. ANDREW WEBER  
First Assistant Attorney General

JEFF L. ROSE  
Deputy Attorney General for Litigation

PAUL D. CARMONA  
Chief, Consumer Protection & Public Health Division

A handwritten signature in dark ink, appearing to read "Pedro", followed by a horizontal line.

PEDRO PEREZ, JR.  
State Bar No. 00788184  
Assistant Attorney General  
Consumer Protection & Public Health Division  
P.O. Box 12548  
Austin, Texas 78711-2548  
(512) 475-4656  
Fax No. (512) 473-8301